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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 18th March 2015

No. 2519–IR(ID)-20/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2014 in I.D. Case No. 5/2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s. Odisha Transport Trading Corporation, Ravi Talkies Square, Lewies Road, Bhubaneswar and their workman Shri Krushna Kumar Nanda was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 05 OF 2012

Dated the 31st December 2014

Present :

Shri Saroj Kumar Sahoo, o.s.j.s. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of . . . First Party—Management
Smt. Manjulata Halan,
M/s Odisha Transport Trading Corporation,
Plot No. 2508(C), Rabi Talkies Square,
Lewies Road, Bhubaneswar.

And

Their Workman Shri Krushna Kumar Nanda, . . . Second Party—Workman
At Sarangi Colony, Palasuni Hata Chhaka,
Post Rasulgarh, Bhubaneswar.

Appearances :

For the First Party—Management	..	Shri R. N. Rath, Auth. Rept.
For the Second Party—Workman	..	Shri R. K. Satapathy, Advocate

AWARD

The Government of Odisha in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause(c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), have referred the following dispute for adjudication by this Court vide their Letter No. 2364—IR (ID)20/12-LESI, dated the 27th March 2012.

“Whether the action of the Management of M/s Odisha Transport Trading Corporation, Bhubaneswar in terminating the services of Shri Krushna Kumar Nanda, Ex-Driver (Heavy Motor Vehicle) w.e.f. the 17th May 2007 is legal and/or justified ? If not, what relief Shri Nanda is entitled to ?”

2. The case of the second party workman is that the first party management having a 10-wheeler Trailer bearing Registration No.OR-02 E-8434 dealing with transportation of Trading Materials from different organisations and Companies, in the month of July, 2005, had engaged the second party workman as a Driver of the said 10-wheeler Trailer in its establishment like other employees. The second party was performing his duty efficiently to the satisfaction of the first party management. The management had committed to pay a monthly remuneration of Rs. 11,000 per month excluding Fooding and other charges to the second party workman. The management had also instructed the second party to engage a Helper and assured to pay a sum of Rs. 4,000 per month towards the remuneration of the Helper, excluding the Fooding and other charges. In pursuance of such commitment and assurance by the first party management, the second party workman had engaged a Helper for the smooth running of the vehicle. In most of the times the second party workman was carrying the material from M/s Konark Construction and Engineers Limited. The second party workman continuously discharged his duty as a Driver under the first party management from July 2005 to May 2007. The first party management was not paying the remuneration of the second party workman and the Helper regularly. The first party management through its Sister Concern M/s Konark Construction and Engineers Limited had given an amount of Rs. 5,000 per month to the second party towards his remuneration and the remuneration of the Helper out of the monthly remuneration of Rs.15,000. In the month of August, 2005 and October, 2006 when the second party repeatedly requested the management for payment of entire outstanding arrear remuneration, the first party management assured to pay the same very soon. Having no other source of income the second party workman constrained to discharge of duty under the first party management till the 16th May 2007 with much difficulties and in a depressed mental condition. On the 16th May 2007 when the second party workman requested the first party management for payment of all the outstanding remuneration, the first party management was annoyed and directed the second party to hand over the key of the Trailer and being an obedient employee the second

party workman handed over the same. The first party management had also asked the second party workman not to come to his duty from the 17th May 2007. After such illegal termination the second party workman once again requested the management for payment of the outstanding remuneration but the management refused to pay a single pie. On the 31st May 2007 the second party workman approached D.L.O., Khurda against his illegal termination and notice was issued to the management. In pursuance of such notice the first party management had submitted his reply/ show cause. The attempt of conciliation by the A.L.O failed for which the present reference by the Government of Odisha. The second party workman is not gainfully employed anywhere since his termination. Hence he has prayed for his reinstatement in service along with full back wages.

2. The case of the first party management is that the reference is not maintainable. The management is not an industrial establishment as per the I.D. Act, 1947 for which the Industrial Disputes Act is not applicable on the management. The first party management is not a Corporation and the name of the first party management is a self styled arrangement by the owner. It is not a registered company under the Registration Act and Company Act. The claim of the second party workman is false, concocted and imaginary one. The first party management has not engaged any person on regular basis. It was not an Industrial Establishment as described under Section 2(j) of I.D. Act, 1947. The first party management had a Truck by which transportation was done as and when required by the customers. On the request of the second party workman he was engaged as a Driver and the Key of the Truck was handed over to him by the owner. It should not be treated as an appointment by the owner. The second party was never appointed in a regular post. The owner has not committed for payment of monthly salary of Rs. 11,000. The second party is not entitled to get protection U/s. 25-F of the I.D. Act, as he has not completed 240 days continuous work in the preceding 12 months from the date of his alleged termination. The second party was engaged as a Driver on daily wage basis, on certain conditions. Out of those conditions one is that he shall arrange a Helper to assist him and the wage of the said Helper shall be borne by the Company. The second party did not engage Helper but fraudulently received his wage for the number of days worked by them at the end of every month. He was also driving the vehicle carelessly by consuming liquor. The first party management had advised the second party workman not to drive the vehicle carelessly. The second party workman had also threatened to damage the Truck intentionally with a view to cause financial loss to the owner. Except the second party workman there was no other worker under the first party management. The second party was engaged to drive the vehicle as and when required. M/s Konark Constructions and Engineer Limited is a Sister Concern which was run by the husband of the Truck-owner and payment was made to the second party workman as per number of days worked by him. He was receiving his wages by putting his signature on the voucher. The first party management has not terminated the service of the second party workman. There is no question of termination as no appointment order was issued to him. The second workman is not entitled to any relief.

3. In view of the pleading of the parties the following issues are settled :—

ISSUES

- (i) "Whether the action of the management of M/s Odisha Transport Trading Corporation, Bhubaneswar in terminating the services of Shri Krushna Kumar Nanda, Ex-Driver (Heavy Motor Vehicle) with effect from the 17th May 2007 is legal and/or justified ?
- (ii) If not, what relief Shri Nanda is entitled to ?

4. The second party workman is examined as W.W. 1 and Exts. 1 to 8 are marked. Exts. 1 to 6 are the second copy of Way bills. Ext. 7 is the copy of the application submitted before the D.L.O. by the second party workman. Ext. 8 is the letter along with the copy of the report dated the 20th September 2011 submitted by the Conciliation Officer-*cum*-A.L.O., Bhubaneswar u/s 12(4) of I.D. Act, 1947. On the other hand, one Shri Surendranath Mishra, General Manager of M/s Konark Construction and Engineering Limited, Telengapentha is examined as M.W. 1 on behalf of the management.

FINDINGS

5. *Issue No. (i) and (ii)*—For the sake of convenience and to avoid repetition both the issues are taken up together for discussion. The second party workman in his claim statement at paragraph-2 has mentioned that the first party management is the owner of a ten-wheeler bearing Registration No. OR-02 E-8434 in which he was engaged as a Driver in the month of July, 2005. At paragraph-9 of his claim statement the second party workman has alleged that he was terminated from his service by the management from the 17th May 2007. In his evidence the second party workman W.W. 1 also deposed that he engaged as a Driver by the first party management in the month of July, 2005 but terminated from his service from the 17th May 2007. From paragraphs-6 to 9 of the written statement filed by the first party management it is clear that the engagement of the second party workman by the first party management as a Driver is admitted. Exts. 1 to 6 are the copies of the Way bills which also shows that the second party was engaged as a Driver in the Truck bearing Registration No. OR-02 E-8434 which belongs to the first party management. One Shri Surendranath Mishra the General Manager of M/s. Konark Construction and Engineers Limited, Telengapentha is examined as M.W. 1 on behalf of the first party management. In his affidavit evidence at paragraph-4 he deposed that whenever required the Manager Cargo Road Carriers used to give Driver as per the requirements and immediately the amount is paid to the Driver as decided by the Manager of the Cargo Road Carriers. At paragraph-19 of his evidence M.W. 1 admitted that Smt. Manjulata Halan was the owner of the first party organisation. Again at paragraph-21 of his evidence during his cross-examination he also admitted that Shri Giridhari Hallan is the Managing Director of M/s Konark Construction and Engineers Private Limited. At paragraph-11 of the written statement M/s Konark Construction and Engineers Limited is a Sister concern which was run by the husband of the Truck Owner and payment was made to the second party workman as per the numbers of days worked by the workman by putting his signature on the voucher from

the evidence of M.W. 1, the admissions in written statement filed by the first party management and the documents available on the record, it is clear that the second party workman was engaged as a Driver by the first party management.

M.W. 1 who is the General Manager of Konark Construction and Engineering Ltd., Telengapentha is examined on behalf of the first party management. During his cross-examination he fairly admitted the engagement of the second party workman under his Company for transportation. It is also clear from his evidence that payment was made to the second party by obtaining his signatures on the vouchers. He failed to produce the relevant documents showing payment to the second party by his company for transportation. He explained that those documents are destroyed due to rain. At paragraph-23 of his evidence he deposed that about 6 to 7 months back he had verified the documents relating to engagement of the second party prior to filing of his affidavit evidence in this case. At paragraph-22 of his evidence he has also admitted that he has filed his affidavit evidence after perusing the documents available in his office. Ext. 8 is the letter of the Conciliation Officer dated 20th September 2011 issued to both the parties to this case. With the said letter the copy of the report prepared by the Conciliation Officer U/s.12 (4) of the I.D.Act, 1947 was also supplied to the parties. On perusal of the said report it is clear that soon after the alleged termination of the second party on the 17th May 2007 he had filed his complaint before the D.L.O., Khurda on the 31st May 2007. It is also clear that the notice was issued by the D.L.O. to the management and due to failure of the conciliation the matter was reported to the Government. It further transpires from the said report that on the 23rd June 2007 the management had submitted its views to the D.L.O., Khurda. So from the materials on record it is clear that the first party management was aware of the claim of the second party prior to the 23rd June 2007. Now the management has come with a plea that the relevant documents relating to the engagement of the second party has been damaged due to rain. The evidence of M.W. 1 regarding the existence of material documents to this case in his office is also pre-varicating in nature. Generally the onus is on the second party to prove that he was in continuous service for 240 days within a period of 12 months preceeding to his termination. The second party has proved some documents relating to his engagement under the first party management for the year, 2005 to 2007 (Ext.-1 to 6). Admittedly there was neither advertisement nor any interview for the appointment of the second party. The second party in his evidence also admitted the same. According to him he was engaged by the first party management orally and there is no document with him showing his appointment by the first party management. Admittedly all the documents relating to the appointment and payment of dues to the second party was under the possession of the management who did not produce the same in Court. The initial burden on the second party workman to prove his continuous appointment under the first party management for more than 240 days has been discharged by him by entering into the witness box. He has produced some documentary evidence and also deposed that he was under continuous employment under the management from June, 2005 till the 16th May 2007. In cases of termination of services of daily wage earners there will be no letter of appointment or termination. There will also be no receipt of proof of payment. Thus in most of cases the workman

can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. In this case the management failed to produce any document. So in the case in hand the non production of the material documents by the management creates adverse inference towards its case. The evidence of W.W. 1 is on oath and nothing material has been elicited through his lips to disbelieve his evidence. So after analysing the evidence on record it is clear that the second party workman was serving under the first party management from the month of June, 2005 till the 16th May 2007.

In his claim statement the second party workman has mentioned that on the 17th May 2007 he was terminated from his service and prior to that on the 16th May 2007 he had handed over the key of the Truck to the management as per its direction. In its written statement at paragraph-13 the first party management has mentioned that the question of termination of the workman does not arise at all when no appointment order was issued to him. W.W.1 in his affidavit evidence at paragraph-11 testified that on the 16th May 2007 when he demanded to the first party management for payment of all outstanding remuneration the said Manjulata Halan being the person in management immediately got annoyed and accordingly instructed him to hand over the key of the Trailer and warned him not to come hence forth to discharge his duty. He further deposed that in obedience of such direction/instruction of Manjulata Halan he handed over the key of the trailer to the first party management on the same day. However in his cross examination at paragraph-25 he admitted that till his examination in Court i.e. on the 19th August 2014 from his date of engagement he had no talk with Manjulata Halan because she is a lady. Admittedly in his statement of claim the second party has not specifically mentioned that Manjulata Halan being annoyed asked him to handover the key of the trailer. When the second party workman had no talk with Manjulata Halan at all how she asked the second party to hand over the key of the trailer and refused him for his duty on the 16th May 2007. So the evidence of W.W. 1 that the first party management Manjulata Halan refused him to perform his duty on the 16th May 2007 is not reliable and trustworthy. During his cross-examination at paragraph-25 W.W. 1 also admitted that it is a fact that when he left the service from the management he had submitted one written receipt showing that he has received all his dues from the employer. According to him the said written acknowledgement was obtained by the management by force. However at paragraph-27 of his evidence during cross-examination he admitted that he has not reported to any authority regarding such forcible obtaining of a receipt from him by the first party management. It was also admitted by him that neither in the application filed by him before the D.L.O. nor in his affidavit evidence before this Court he has disclosed about such document. So the evidence of W.W.1 that the receipt executed by him was taken by force by the first party management is not reliable and trustworthy. The evidence of W.W.1 seems to be after thought. On the other hand it is clear from the admission of the W.W.1 that he had received all his money dues from the first party management when he left his service. Although there is no specific pleading of the first party management that the second party has abandoned his service, from Annexure of Ext.-8, i.e. the report of the Conciliation Officer it is clear that the management has taken the plea of

voluntary abandonment of service by the second party. After scrutinising the evidence on record it is clear that the first party management has not terminated the service of the second party, but the second party has abandoned his service. In view of admission of W.W. 1 that he has executed a receipt acknowledging acceptance of all his dues, in favour of management the second party is also not entitled to any other relief.

The reference is disposed of accordingly.

Dictated and corrected by me

S. K. SAHOO

31-12-2014

Presiding Officer
Labour Court, Bhubaneswar.

S. K. SAHOO

31-12-2014

Presiding Officer
Labour Court, Bhubaneswar.

By order of the Governor

M. NAYAK

Under-Secretary to Government